

REMARKS

Reconsideration of the above identified patent application is hereby respectfully requested in view of the foregoing amendments and following remarks. Claims 2, 16, 17, and 21 have been canceled and claim 1 has been amended. Claims 1, 3-6, 8-15, and 19-20 remain in the case.

The applicant appreciates the indication of allowability of claims 2-6 and 9-15 if rewritten to overcome the rejection under 35 USC 112 and to include the limitations (of claim 2) in the base claim (no intervening claims between claim 2 and claim 1).

Also, the continued allowability of claims 19 and 20 is most appreciated.

A petition and Fee for and Extension of Time under 37 CFR 1.136(a) and payment thereof is attached hereto.

1. Claims 1-6 and 9-15 were rejected under 35 USC 112, second paragraph, as being indefinite.

It is well believed to be true that this current response complies with everything required by the Examiner to place the application into condition of allowance and therefore it is eligible for entry as an AMENDMENT AFTER FINAL.

Accordingly, consideration and entry thereof is respectfully requested as is a reconsideration of the rejection under 35 USC 112.

However, if for any reason (none is anticipated) that this amendment is not fully persuasive, the Examiner is asked to withdraw consideration of the previous Office Action as FINAL because the making of this Office Action (paper no. 8) FINAL is believed to be improper.

In the previous Office Action that was mailed on 4/21/03 (paper no. 5) the Examiner stated in item 11 that claim 7 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

This is exactly what was done. Amended claim 1 included the exact language of claim 7 (there were no intervening

claims). Therefore, based on the statements of the Examiner, the application was truly in condition of allowance.

In this instant Office Action (paper no. 8), the Examiner has reversed the position stated in the previous Office Action and now requires that additional recitation in order to make the claim definite be included in the base claim.

If the Examiner instructs the applicant to amend the claims in a particular way, and if the applicant complies, then the application is expected to be placed into condition of allowance, and certainly not receive a FINAL rejection in response to merely complying with the Examiner's instructions to place the application into condition of allowance.

It is, of course, certainly acknowledged and accepted that the Examiner has prerogative to fully reconsider any matter, however as the applicant did not make any new arguments or raise any new issues for consideration, it is believed to be improper to make an Office Action that reverses the Examiner's own stated position, which the applicant has complied with, a FINAL rejection.

The applicant was entitled in his response to a first Office Action to make all of the amendments and all of the arguments that now appear in this current response (Amendment After Final).

In other words, it is believed that the applicant is entitled to have a "non-final" opportunity to make the claims more definite if that is what the Examiner now requires. However, for the Examiner to not initially require such action by the applicant in the first Office Action, but instead to require the applicant to amend the claims in a particular way under assurance of allowability, and subsequent to the applicant doing so, to withdraw the "assurance" that such action would render the claims allowable and instead respond with a FINAL rejection is believed to be improper, and reconsideration by the Examiner is respectfully requested.

Therefore, if this Amendment After Final succeeds in placing this application into condition of allowance (as is expected), this issue is moot and the Examiner is requested to disregard the arguments presented herein concerning a FINAL rejection and pass the application into allowance.

However, if for any reason, the application is not in condition of allowance, the Examiner is respectfully requested to withdraw the FINAL REJECTION status of the previous Office Action (paper no. 8) and to enter this amendment and consider it as a NON-FINAL submission on the merits thereof.

After review of the issues now raised by the Examiner, the undersigned does indeed agree with the Examiner. Accordingly, the undersigned has indeed added additional recitation to make claim 1 definite and therefore to also make all of the remaining dependent claims definite.

Amended claim 1 now includes additional recitation which is believed to clearly define where the planar base is placed (over a ferrous surface) and how the items are retained in the hole (magnetic attraction to the ferrous surface).

It is believed that this additional recitation is definite and that it well places claim 1 into condition of allowance along with all remaining claims that depend therefrom. Accordingly, the rejection of 35 USC 112, second paragraph is believed to be overcome and reconsideration is again respectfully requested.

2-3. Claims 16, 17, and 21 have been canceled and the rejection as applied under 35 USC 103 (a) is believed to be overcome (as these claims no longer remain for consideration). Reconsideration is respectfully requested.

4. The limitations of claim 2 have been included with claim 1. Claim 2 has been canceled. Remaining claims 1, 3-6, and 9-15 are therefore believed to be in condition of allowance. Reconsideration is respectfully requested.

5. Claims 19 and 20 are allowable. Thank you.

6. Objection and support thereof regarding the Office Action that was mailed on December 16, 2003 being made FINAL has been presented herein and is of significance only if this Amendment After Final is not fully persuasive. Again, this is not expected (it is expected to be fully persuasive) because it, once again, fully complies with what is believed that the Examiner has indicated as being necessary in order to bring the application into condition of allowance.

As all remaining claims 1, 3-6, 8-15, and 19-20 appear to be in condition of allowance, reconsideration thereof is

respectfully requested, and a notice of allowance is
courteously urged at the earliest time. Thank you.

The applicant appreciates the opportunity to
communicate by telephone with the Examiner if necessary. If
there remain any unresolved issues, the Examiner is
respectfully urged to place a telephone call to the
undersigned in an attempt to resolve the issues. Please
continue to direct all correspondence to the correspondence
address and telephone as shown below.

Respectfully submitted,

A handwritten signature in cursive script, followed by the date "9/16/04" written in a similar style.

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